

ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009
COMMITTEE STATEMENT (CORRECTED)
LB545

Hearing Date: Monday February 09, 2009
Committee On: Education
Introducer: Adams
One Liner: Change the Tax Equity and Educational Opportunities Support Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	6	Senators Adams, Ashford, Avery, Cornett, Giese, Sullivan
Nay:	1	Senator Howard
Absent:	1	Senator Haar
Present Not Voting:		

Proponents:

Senator Greg Adams
Michael Dulaney
Alan Katzberg
Craig Kautz
Mark Shepard
Curt Bromm

Representing:

Introducer
NCSA
NRCSA
Hastings Public School
Lincoln Public Schools
Lexington Public Schools

Opponents:

Jess Wolf
Larry Scherer

Representing:

NSEA
NSEA

Neutral:

Dennis Pool
Virgil Harden
Terry Haack
Russ Inbody

Representing:

Omaha Public Schools
Grand Island Public Schools
Bennington Public Schools
Nebraska Department of Education

Summary of purpose and/or changes:

Legislative Bill 545 would reduce state aid to school districts by lowering the base limitation rate from 2.5% to 1% for 2009-10 and 2010-11, continuing to subtract \$20 million from allocated income tax funds (rebate) for 2009-10 and 2010-11, modifying the averaging adjustment, and extending the transitional multiplier for the teacher education adjustment.

Section 77-3446 would be amended by decreasing the base limitation rate for school districts from 2.5% to 1% for 2009-10 and 2010-11. The rate would remain at 2.5% for all other political subdivisions. The decreased rate would affect state aid by reducing the cost growth factor, which is used in the calculation of formula need to increase the general fund operating expenditures to reflect two years of inflation and other increases in education costs. The cost growth factor equals the basic allowable growth rate (which is defined as the base limitation rate) for the year for which aid is being calculated plus the basic allowable growth rate for the previous year plus 1%. With the proposed changes, the cost growth factor would be:

4.5% (1.0% plus 2.5% plus 1.0%) for 2009-10
3.0% (1.0% plus 1.0% plus 1.0%) for 2010-11
4.5% (2.5% plus 1.0% plus 1.0%) for 2011-12
6.0% (2.5% plus 2.5% plus 1.0%) for 2012-13

The decreased rate would also affect both methods of calculating budget limits by decreasing the basic allowable growth rate and the rate of growth for formula need.

Section 79-1005.01 would be amended by subtracting \$20 million from allocated income tax funds (rebate) for 2009-10 and 2010-11. This decrease was already included in the calculation of aid for 2008-09. Expired language was also removed from the section.

Section 79-1007.18 would be amended by modifying the averaging adjustment. The averaging adjustment adds to formula need for districts that have below average basic funding per student and levies above a specified level. With the modifications, the minimum qualifying levy would equal the local effort rate, which is currently \$1.00/\$100 of valuation. The local effort rate is set at \$0.05 below the maximum levy and moves with the maximum levy. The current language sets the minimum qualifying levy at a \$1.00 regardless of the maximum levy. The proposal also removes the varying levels for the adjustment correlated to higher levies. With the proposed changes, all qualifying districts would receive the adjustment at 50% of the difference between the statewide average basic funding per formula student minus the district's basic funding per formula student. Without the proposed changes, the percentages used in the calculation for 2009-10 and thereafter would vary from 50% at \$1.00 levy to 90% at \$1.04. The percentages used in the calculation for 2008-09 varied from 10% at \$0.96 to 90% at \$1.04, but only 75% of the students were used in the calculation.

Section 79-1007.19 would be amended by delaying an increase in the teacher education adjustment by one year to 2011-12. The adjustment is currently calculated by multiplying 10% of the district's basic funding by the district's teacher education index after subtracting one from the index. The current language increases the percentage of basic funding from 10% to 13.75% beginning with aid calculated for 2010-11. The proposal would delay the increase to 2011-12.

This measure contains an emergency clause.

Explanation of amendments:

The Committee Amendments replace the original provisions. The committee amendments would address reorganization incentives from LB 546, a hold harmless in the aid formula for learning community school districts from LB 391, a budget exception for early retirements from LB 364, possible increases in employer contributions to the retirement systems for school employees, budget limitations, the cost growth factor, the averaging adjustment, the instructional time allowance, funds from the federal American Recovery and Reinvestment Act of 2009, and bonding authority pursuant to the federal act. The amendment contains an emergency clause.

REORGANIZATION INCENTIVES

The reorganization incentives from LB 546 would reauthorize school district reorganization incentives with a modified formula using the remainder of the funds that were available for previous incentives. The difference between these provisions in the amendment and the original bill is that the set aside from the School District Reorganization Fund for temporary funding for aggregation routing equipment and network transport costs for Network Nebraska is eliminated and the section providing the procedures for the temporary funding is outright repealed. The set aside has never been used.

Section 9-812 would be amended by returning any amounts transferred to the Education Innovation Fund back to the School District Reorganization Fund.

Section 79-1011 would be amended to allow incentives for reorganizations occurring after May 31, 2009 and before

June 1, 2011. Applications would have to be filed on or before June 15, 2009 or within 30 days following the issuance of the boundary change order, whichever is later. The required study would need to have been completed prior to the reorganization. The formula for the incentives for each district involved in the reorganization, except districts with 390 or more students, would be changed to equal: $\$125,000 + \{ \$500 \times (390 - \text{Average Daily Membership of the District}) \}$. The prior incentive formula for districts with less than 390 students was: $\text{ADM} \times \{ \$4,000 - [\text{ADM} \times (3,000/390)] \}$. Up to 50% of that amount would be paid in the 1st year out of the School District Reorganization Fund. If there is not enough money in the fund, payments would be prorated. The remainder would be paid in the next year after new base year incentives had been paid. The second year payments would also be prorated if there are insufficient funds.

Section 79-1012 would be amended by eliminating a \$200,000 set aside in the School District Reorganization Fund to provide temporary funding for aggregation routing equipment and network transport costs for Network Nebraska. All of the money in the fund, except the unused portion of the \$200,000, was to have been transferred to the Education Innovation Fund on July 1, 2008. Under current law, the rest of the remaining money is to be transferred on July 1, 2010. The obsolete language and the language regarding the upcoming transfer would be deleted. The changes proposed for section 9-812 would return all transferred money back to the School District Reorganization Fund. With the changes, the entire Fund would be available for reorganization incentives until July 1, 2013. On that date the remaining balance in the fund would be transferred to the Education Innovation Fund.

Section 86-5,101 which provided the procedures for the temporary funding for aggregation routing equipment and network transport costs would be outright repealed.

LEARNING COMMUNITY HOLD HARMLESS

Legislative Bill 391 contained an extension of the hold harmless provisions for learning community schools in the distribution of common levy proceeds. The amendment uses a different approach by adding a minimum level of formula need for such districts to the determination of formula need and eliminates both the current hold harmless provisions from the common levy distribution and current phase-in provisions from the state aid calculation.

Section 79-1007.11 would be amended by not allowing the formula need in the first year of a new learning community to be below a certain level for member school districts. The minimum level for formula need for such districts would equal the sum of the following items for the prior school fiscal year:

- District's state aid;
- plus District's other actual receipts included in formula resources;
- plus (District's general fund levy up to $\$1.05 \times$ District's assessed valuation).

For future years, the section already provides that the minimum formula need for any district is equal to 100% of the district's prior year formula need.

Section 79-1073 would be amended by eliminating the current hold harmless provisions in the distribution of common levy proceeds in a learning community. The general fund common levy proceeds are distributed proportionally based on the difference of formula need minus state aid. The provisions that would be eliminated base the proportionality for the first three years on the greater of the difference of formula need minus state aid or the difference of the sum from the year before the learning community of state aid plus the levy multiplied by the assessed valuation minus the current year state aid.

Section 79-1015, which provides a phase-in of the common resource base for learning communities for the purpose of calculating state aid, would be outright repealed.

EARLY RETIREMENT BUDGET EXCEPTION

Legislative Bill 364 provided for a return to a budget exception for voluntary termination agreements. The amendment provisions mirror those in the original bill.

Section 79-1003 would be amended by excluding payments for voluntary terminations occurring prior to July 1, 2009 from GFOE for the purpose of calculating state aid beginning with the 2010-11 state aid calculation.

Section 79-1028.01 would be amended by excluding payments for voluntary terminations occurring prior to July 1, 2009 from the budget limitations beginning with expenditures made during the 2009-10 school fiscal year.

EMPLOYER CONTRIBUTIONS TO RETIREMENT

The LB 545 committee amendments do not change any contribution rates for the School Retirement System of the State of Nebraska or the Class V School Employees Retirement System. However, there are changes that would assist school districts in meeting increased employer contribution rates should they occur.

Section 79-1003 would be amended by excluding payments made during 2009-10 through 2013-14 to the School Retirement System of the State of Nebraska above a contribution rate of 7.35% or to the Class V School Employees Retirement System above a contribution rate of 7.37% from GFOE for the purpose of calculating state aid.

Section 79-1028.01 would be amended by excluding payments made during 2009-10 through 2013-14 to the School Retirement System of the State of Nebraska above a contribution rate of 7.35% or to the Class V School Employees Retirement System above a contribution rate of 7.37% from the budget limitations.

A new section would provide retirement aid for 2009-10 and 2010-11 in the amount of \$30 million. The retirement aid would be distributed to districts based on each district's share of the statewide salary total. The aid would be included as a resource in the calculation of state aid, but would not affect the formula need of a district.

Section 79-1017.01 would be amended to include retirement aid in formula resources for the calculation of TEEOSA aid.

Section 79-1001 would be amended by including the retirement aid provisions in the Tax Equity and Educational Opportunities Support Act.

BUDGET LIMITATIONS AND THE COST GROWTH FACTOR

The budget limitations would be modified to decrease the rate of growth in school district spending. The change in the cost growth factor that would follow pursuant to current law would be delayed for two years to accommodate the possibility of increased expenditures for retirement outside of the budget limits.

Section 77-3446 would be amended by decreasing the base limitation rate for school districts from 2.5% to 1.5% for 2009-10 through 2012-13. The rate would remain at 2.5% for all other political subdivisions. The basic allowable growth rate, defined in section 79-1025 as the base limitation rate, is used to control spending growth for school districts and is used in the approximation of spending growth in the TEEOSA formula. School district budget growth, with some exceptions, is limited to the greater of the amount allowed by a district's applicable allowable growth rate or the amount allowed to reach 120% (currently) of formula need. The applicable allowable growth range starts at the basic allowable growth rate and increases for low spending districts. Without other changes in the amendments, the decreased base limitation rate would affect both methods of calculating budget limits by decreasing the basic allowable growth rate and the rate of growth for formula need.

Section 79-1007.10 would be amended by setting the cost growth factor at 106% for 2009-10 and 2010-11. The cost growth factor increases two year old expenditures in the formula to approximate spending growth. Currently, the cost growth factor equals the basic allowable growth rate (which is defined as the base limitation rate) for the year for which aid is being calculated plus the basic allowable growth rate for the previous year plus 1%. With the proposed changes, the cost growth factor would be:

106.0% for 2009-10;

106.0% for 2010-11;
104.0% (1.5% plus 1.5% plus 1.0%) for 2011-12;
104.0% (1.5% plus 1.5% plus 1.0%) for 2012-13;
105.0% (2.5% plus 1.5% plus 1.0%) for 2013-14; and
106.0% (2.5% plus 2.5% plus 1.0%) for 2014-15.

With the proposed changes to base limitation rate, if the cost growth factor provisions were not modified, the cost growth factor would be:

105.0% (1.5% plus 2.5% plus 1.0%) for 2009-10;
104.0% (1.5% plus 1.5% plus 1.0%) for 2010-11;
104.0% (1.5% plus 1.5% plus 1.0%) for 2011-12;
104.0% (1.5% plus 1.5% plus 1.0%) for 2012-13;
105.0% (2.5% plus 1.5% plus 1.0%) for 2013-14; and
106.0% (2.5% plus 2.5% plus 1.0%) for 2014-15.

Section 79-1023 would be amended to modify the maximum budget provisions for 2009-10 and 2010-11. Although the applicable allowable growth rate provisions would remain unchanged, when combined with the proposed changes to the base limitation rate in section 77-3446, the applicable allowable growth rates would be reduced. The alternative budget limitations based on formula need would be decreased from 120% to 116.15% of the formula need remaining after subtracting special education. Both budget alternatives exclude special education from the limitations.

AVERAGING ADJUSTMENT

Section 79-1007.18 would be amended by modifying the averaging adjustment. The averaging adjustment adds to formula need for districts that have below average basic funding per student and levies above specified levels. The amount of additional need is based on the number of formula students and a percentage of the difference between the statewide average basic funding per student minus the district's basic funding per student. The percentage of the difference that is used is determined according to the district's prior year general fund levy, with a minimum qualifying levy is \$1.00. The range of percentages is 50% at a \$1.00 levy and 90% at a \$1.04 levy.

With the proposed changes, the averaging adjustment for 2009-10 would be reduced by 25% for all qualifying districts. For 2010-11 and 2011-12, the reduction would be increased to 50% and the percentage of the difference would be 50% for all qualifying districts with at least a \$1.00 levy. Beginning with 2012-13, the adjustment would equal the formula students multiplied by difference between 90% of the statewide average and the district's basic funding per student for districts with at least a \$1.00 levy.

INSTRUCTIONAL TIME ALLOWANCE

Section 79-1007.23 would be amended by modifying the instructional time allowance. The instructional time allowance is subtracted out of general fund operating expenditures prior to the calculation of basic funding and then added back to the formula need of the district generating the allowance. The allowance is currently based on the amount that a district is above their comparison group in the average hours of instruction for each full-time student. The proposal would base the allowance on the statewide average, instead of the comparison group average, beginning in 2010-11. The Department of Education would also be required to define the average hours of instruction and the definition could not include extracurricular activities outside of the regular school day or time designated for students to eat lunch.

AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

A new section recognizes the inclusion of proceeds from the American Recovery and Reinvestment Act of 2009 in the distribution of aid through TEEOSA. For each of the 2009-10 and 2010-11 school fiscal years, the American Recovery and Reinvestment percentage would equal the amount of federal funding to be distributed through TEEOSA divided by the total equalization aid. For each school district, the American Recovery and Reinvestment allocation would equal the

district's equalization aid multiplied by the American Recovery and Reinvestment percentage. The allocation would only be distributed to the district upon application and approval by the Governor. The allocation would be accounted for and spent in accordance with the application and the American Recovery and Reinvestment Act of 2009. Such allocation would not be considered special grant funds and would be considered state aid for all purposes except as otherwise provided in the new section or the federal Act.

Sections 79-1007.07 and 79-1007.09 would be amended by adding funds distributed through the Tax Equity and Educational Opportunities Support Act pursuant to the federal American Recovery and Reinvestment Act of 2009 to the funding sources allowed for poverty allowance expenditures or limited English proficiency allowance expenditures. Currently, only expenditures of noncategorical funds generated by state or local taxes may be designated as poverty or limited English proficiency allowance expenditures.

Section 79-1001 would be amended by including the new provisions in the Tax Equity and Educational Opportunities Support Act.

BONDING AUTHORITY

Section 79-10,110 would be amended to enable school districts to utilize bond programs authorized in the American Recovery and Reinvestment Act of 2009. School boards would be required to hold a public hearing regarding the use of such bond authority. Notice of such hearing must be published for three consecutive weeks prior to the hearing in a legal newspaper published or of general circulation in the school district. A school board must designate the particular project or projects for which such a bond will be issued, the period of years for which the tax will be levied to repay such bond, and the amount of the levy for each year of the period. Levies to finance such bonds would be subject to the current limit of 5.2 cents per \$100 of valuation for all projects financed pursuant to this section. Prior to such hearing, a school board would be required to prepare an itemized estimate of the amount to be expended on the proposed project or projects. A school district which utilizes such bond authority would be required to establish an American Recovery and Reinvestment Act of 2009 purpose undertaking account within its qualified capital purpose undertaking fund.

The State Department of Education would be required to establish procedures for allocating bond authority to school boards as may be necessary pursuant to an American Recovery and Reinvestment Act of 2009 bond.

EMERGENCY CLAUSE

The amendment contains an emergency clause.

Greg Adams, Chairperson